

AMENDED IN ASSEMBLY MARCH 16, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 413

Introduced by Assembly Member Chávez

February 19, 2015

An act to amend Section ~~999.12~~ 999 of the Military and Veterans Code, relating to veterans.

LEGISLATIVE COUNSEL'S DIGEST

AB 413, as amended, Chávez. California Disabled Veteran Business Enterprise ~~Program~~ *Program*.

The California Disabled Veteran Business Enterprise Program addresses the special needs of disabled veterans by assisting state procurement authorities in meeting or exceeding the disabled veteran enterprise participation goal of 3% for procurement contracts. Existing law, under the program, authorizes a child or spouse to continue to operate a disabled veteran business enterprise for 3 years after the death or the certification of a permanent medical disability of a disabled veteran who was the majority owner of that enterprise, but only for purposes of any contract entered into before his or her death or certification of disability.

This bill would delete the provision that only allows a child or spouse to operate the business for purposes of the contracts entered into before death or certification of disability.

~~Existing law requires departments that issue bonds or enter into contracts on behalf of the state to appoint a Disabled Veteran Business Enterprise Program Advocate. Existing law requires this advocate to, among other things, assist certified disabled veteran business enterprises in participating in that agency's contracting process and serve as an~~

advocate for the disabled veteran business enterprises that are utilized as the agency's contractors or subcontractors.

~~This bill would make technical, nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 999 of the Military and Veterans Code is
2 amended to read:

3 999. (a) This article shall be known as, and may be cited as,
4 the California Disabled Veteran Business Enterprise Program. The
5 California Disabled Veteran Business Enterprise Program is
6 established to address the special needs of disabled veterans
7 seeking rehabilitation and training through entrepreneurship and
8 to recognize the sacrifices of Californians disabled during military
9 service. It is the intent of the Legislature that every state
10 procurement authority honor California's disabled veterans by
11 taking all practical actions necessary to meet or exceed the disabled
12 veteran business enterprise participation goal of a minimum of 3
13 percent of total contract value.

14 (b) As used in this article, the following definitions apply:

15 (1) "Administering agency" means the Treasurer in the case of
16 contracts for professional bond services, and the Department of
17 General Services' Office of Small Business and Disabled Veteran
18 Business Enterprise Services, in the case of contracts governed by
19 Section 999.2.

20 (2) "Awarding department" means a state agency, department,
21 governmental entity, or other officer or entity empowered by law
22 to issue bonds or enter into contracts on behalf of the state.

23 (3) "Bonds" means bonds, notes, warrants, certificates of
24 participation, and other evidences of indebtedness issued by, or
25 on behalf of, the state.

26 (4) "Contract" includes any agreement or joint agreement to
27 provide professional bond services to the State of California or an
28 awarding department. "Contract" also includes any agreement or
29 joint development agreement to provide labor, services, materials,
30 supplies, or equipment in the performance of a contract, franchise,

1 concession, or lease granted, let, or awarded for, and on behalf of,
2 the state.

3 (5) (A) “Contractor” means any person or persons, regardless
4 of race, color, creed, national origin, ancestry, sex, marital status,
5 disability, religious or political affiliation, age, or any sole
6 proprietorship, firm, partnership, joint venture, corporation, or
7 combination thereof that submits a bid and enters into a contract
8 with a representative of a state agency, department, governmental
9 entity, or other officer empowered by law to enter into contracts
10 on behalf of the state. “Contractor” includes any provider of
11 professional bond services who enters into a contract with an
12 awarding department.

13 (B) “Disabled veteran business enterprise contractor,
14 subcontractor, or supplier” means any person or entity that has
15 been certified by the administering agency pursuant to this article
16 and that performs a “commercially useful function,” as defined
17 below, in providing services or goods that contribute to the
18 fulfillment of the contract requirements:

19 (i) A person or an entity is deemed to perform a “commercially
20 useful function” if a person or entity does all of the following:

21 (I) Is responsible for the execution of a distinct element of the
22 work of the contract.

23 (II) Carries out the obligation by actually performing, managing,
24 or supervising the work involved.

25 (III) Performs work that is normal for its business services and
26 functions.

27 (IV) Is responsible, with respect to products, inventories,
28 materials, and supplies required for the contract, for negotiating
29 price, determining quality and quantity, ordering, installing, if
30 applicable, and making payment.

31 (V) Is not further subcontracting a portion of the work that is
32 greater than that expected to be subcontracted by normal industry
33 practices.

34 (ii) A contractor, subcontractor, or supplier will not be
35 considered to perform a “commercially useful function” if the
36 contractor’s, subcontractor’s, or supplier’s role is limited to that
37 of an extra participant in a transaction, contract, or project through
38 which funds are passed in order to obtain the appearance of a
39 disabled veteran business enterprise participation.

(6) “Disabled veteran” means a veteran of the military, naval, or air service of the United States, including, but not limited to, the Philippine Commonwealth Army, the Regular Scouts, “Old Scouts,” and the Special Philippine Scouts, “New Scouts,” who has at least a 10-percent service-connected disability and who is domiciled in the state.

(7) (A) “Disabled veteran business enterprise” means a business certified by the administering agency as meeting all of the following requirements:

(i) It is a sole proprietorship at least 51 percent owned by one or more disabled veterans or, in the case of a publicly owned business, at least 51 percent of its stock is unconditionally owned by one or more disabled veterans; a subsidiary that is wholly owned by a parent corporation, but only if at least 51 percent of the voting stock of the parent corporation is unconditionally owned by one or more disabled veterans; or a joint venture in which at least 51 percent of the joint venture’s management, control, and earnings are held by one or more disabled veterans.

(ii) The management and control of the daily business operations are by one or more disabled veterans. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business.

(iii) It is a sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.

(B) Notwithstanding subparagraph (A), after the death or the certification of a permanent medical disability of a disabled veteran who is a majority owner of a business that qualified as a disabled veteran business enterprise prior to that death or certification of a permanent medical disability, ~~and solely for purposes of any contract entered into before that death or certification,~~ that business shall be deemed to be a disabled veteran business enterprise for a period not to exceed three years after the date of that death or certification of a permanent medical disability, if the business is inherited or controlled by the spouse or child of that majority owner, or by both of those persons.

(8) “Foreign corporation,” “foreign firm,” or “foreign-based business” means a business entity that is incorporated or has its

1 principal headquarters located outside the United States of
2 America.

3 (9) “Goal” means a numerically expressed objective that
4 awarding departments and contractors are required to make efforts
5 to achieve.

6 (10) “Management and control” means effective and
7 demonstrable management of the business entity.

8 (11) “Professional bond services” include services as financial
9 advisers, bond counsel, underwriters in negotiated transactions,
10 underwriter’s counsel, financial printers, feasibility consultants,
11 and other professional services related to the issuance and sale of
12 bonds.

13 ~~SECTION 1. Section 999.12 of the Military and Veterans Code~~
14 ~~is amended to read:~~

15 ~~999.12. Each awarding department shall appoint an agency~~
16 ~~Disabled Veteran Business Enterprise Program Advocate. This~~
17 ~~person shall be the same individual appointed pursuant to Section~~
18 ~~14846 of the Government Code. The agency Disabled Veteran~~
19 ~~Business Enterprise Program Advocate shall do all of the~~
20 ~~following:~~

21 ~~(a) Assist certified disabled veteran business enterprises in~~
22 ~~participating in that agency’s contracting process.~~

23 ~~(b) Assist contract officers in seeking disabled veteran business~~
24 ~~enterprises to participate in the agency’s contract and procurement~~
25 ~~activities by performing outreach efforts to recruit disabled veteran~~
26 ~~business enterprises to offer their services, as either a prime~~
27 ~~contractor or subcontractor, on any contract proposed by the~~
28 ~~awarding department that requires disabled veteran business~~
29 ~~enterprise participation, and by other feasible means.~~

30 ~~(c) Meet regularly with the California Disabled Veteran~~
31 ~~Business Enterprise Program Advocate and contract and~~
32 ~~procurement staffs of their departments to disseminate information~~
33 ~~about the California Disabled Veteran Business Enterprise~~
34 ~~Program.~~

35 ~~(d) Serve as an advocate for the disabled veteran business~~
36 ~~enterprises that are utilized as the agency’s contractors or~~
37 ~~subcontractors.~~

38 ~~(e) Report to the Office of Small Business and Disabled Veteran~~
39 ~~Business Enterprise Services regarding any violation of this article.~~

- 1 ~~(f) Coordinate and meet, on a regular basis, with the California~~
- 2 ~~Disabled Veteran Business Enterprise Program Advocate at the~~
- 3 ~~Department of Veterans Affairs, in an effort to meet the statewide~~
- 4 ~~3-percent goal pursuant to Section 999.2.~~

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